ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS OF WORLDCOM, INC.

WorldCom, by its undersigned counsel, hereby responds to the Public Notice ("Notice"), DA 97-2214, issued on October 20, 1997, in the above referenced proceeding.

I. INTRODUCTION

Three parties representing the interests of every LEC in the U.S. have asked for blanket waivers of payphone ANI signalling requirements imposed by the Payphone Orders.[1] For the reasons below, WorldCom opposes each of the waiver requests. The requests are actually untimely requests for reconsideration. Moreover, even if these eleventh hour petitions and letters could be construed as waiver requests, they are so overbroad as to have the effect of eviscerating the entire call tracking system which lies at the heart of the "market-based" per call compensation scheme.

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20541 (1996) ("Payphone Order"); Order on Reconsideration, 11 FCC Rcd. 21233 (1996) ("Payphone Reconsideration Order").

Accordingly, they are inconsistent with the public interest and cannot be granted.

II. BACKGROUND

The per call compensation plan adopted by the Commission, for all of its flaws, at least provides a method for payphone providers to be compensated for the use of their property to make non-coin calls. The plan is premised, however, on the assumption that compensation rates will ultimately be determined by location owners who will be under market pressure to set rates that payphone users and toll free service subscribers will tolerate. The whole plan is dependent on four co-extensive, interdependent features. In this way the compensation plan is akin to a table which rests on four legs and cannot stand if any one leg is removed. Granting the requested waivers would remove one leg and prevent the implementation intended by the Commission.

The first leg is the end user's ability to choose whether or not to make a payphone call which will incur added expenses at the whim of the PSP. The customer needs real-time pricing information to know whether to make the call, and toll free subscribers need enough information to decide whether to reject an overpriced call. For the toll free subscriber the decision requires real-time delivery of an unambiguous payphone identifier to permit the carrier to block the call.

The second leg is the PSP's obligation to purchase from the LEC a service which will allow it to identify its phone using network signalling at the time a call is made.

The third leg is the obligation of LECs to provide to PSPs the service they need to provide payphone specific coding digits as part of the payphone ANI. This is the leg which the waiver requests would remove.

The fourth leg is the obligation of facilities-based carriers to recognize the specific payphone coding digits which identify compensable calls originating from payphones, block these calls if a customer requests, collect the compensation amount from carriers which do not have facilities, and collect compensation expenses on a per-call basis from retail customers.

The First Report and Order outlined each of these obligations and recognized their interdependence by conditioning the receipt of compensation upon the transmission of the signalling that identifies payphone calls. However, because of ambiguity in this Order, two IXC payors sought clarification of the obligations of LECs and PSPs with respect to payphone coding digits. Specifically, in October 1996, MCI and AT&T asked the Commission to clarify that the "07" ANI ii pair is not acceptable as a payphone identifier for compensation purposes. On October 28, 1996, the largest LECs and PSPs in the country (the RBOCs) filed comments on these requests, characterizing them as proposals for the Commission to "put some teeth behind this [signalling] requirement by denying compensation to PSPs who fail to pass the payphone coding digits. The RBOC coalition stated that it agreed with this position "in principle." However, the RBOCs stated that the way to proceed was to require all PSPs to order a certain type of line.[2] In its Order on Reconsideration, the Commission granted the requested clarification, removed the ambiguity of the First Report and Order, and resolved this important issue by describing ***exactly*** what the LECs and PSPs were to do:

> Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. We also clarify, pursuant to a request by MCI, that LECs must make available to PSPs, on a tariff basis, such coding digits as a part of the ANI for each payphone. We decline to require PSPs to use COCOT lines, as suggested by the RBOCs, because we have previously found that COCOT service is not available in all jurisdictions.[3]

The LECs then fell silent. They did not seek further reconsideration. They did not file an appeal. Unfortunately, they also did not get to work to ensure that by October 7, the planned date for implementation of per-call compensation, they would be in a position to perform their part of the byzantine technical process needed to make per-call compensation work.

In contrast, relying on the rules adopted in the Payphone Orders, IXCs like WorldCom spent millions of dollars in preparation to track payphone calls. WorldCom advised dozens of resale carrier customers to expect compensation expenses to be passed through on a per-call basis.

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[2]*See The RBOC Payphone Coalition's Opposition to Petitions for Reconsideration*, October 28, 1996 at 17-18. The fact that the major LECs and PSPs took a position on this issue more than a year ago makes it clear that here has never been any question about the critical need for payphone providers to identify themselves.

[3]*Payphone Reconsideration Order*, CC Docket No. 96-128 at ¶ 64 (emphasis supplied).

The LECs waited until the Spring of 1997 before pursuing a wholly different strategy. Apparently unfazed by paragraph 64 of the Order on Reconsideration, some major LECs began reprovisioning their own payphones using "COCOT" lines which carry the "07" digit pair. Rather than implementing the necessary signalling or telling the Commission that they would not be ready by October, the BOC ANI Coalition began a series of ex parte filings intended to suggest that there was somehow a controversy over what the LECs were supposed to do. This alleged controversy was founded on a supposed nexus between this proceeding and certain fraud protection options granted to the LECs in CC Docket 91-35.

WorldCom replied to this disinformation campaign, rebutting the phony dichotomy constructed by the LECS and explaining that our per call tracking plans, as directed by the Commission, would not include payment for calls delivered with the ANI ii pair "07."[4] WorldCom pointed out that the Common Carrier Bureau had already issued an Order which made clear that the obligations to deliver payphone digits were completely independent of the OLNS implementation schedule.

As October 7 drew near and carriers awaited an order setting the per-call rate, the LECs finally acknowledged the significance of the Commission's signalling requirement, by asking to be excused from it in a variety of situations. One would have

[4] *See Letter to William F. Caton, Secretary, from Douglas F. Brent and Richard S. Whitt, August 27, 1997.* Other IXCs had already responded. AT&T began warning the Commission as early as May, 1997 that the LECs were not complying with the Commission's signalling requirements.

assumed that requests so hopelessly out of time would be given little notice. Instead, they prompted the Common Carrier Bureau to sua sponte grant temporary waivers that will excuse up to forty per cent of the payphones in the U.S. from providing the signalling which is essential for WorldCom and other IXCs to fulfill their call tracking and payment obligations.[5] Essentially, the temporary waiver is a reward to LECs for flaunting the Commission's rules.

III. THE REQUESTS DO NOT MEET THE COMMISSION'S REQUIREMENTS FOR JUSTIFICATION OF WAIVERS.

The United States Telephone Association ("USTA") filed its blanket waiver request on September 30. Building upon the prevarication of the BOC ANI Coalition's various ex parte filings, USTA asserts that there is a "debate" over the meaning of Paragraph 64, that there are special circumstances that make compliance with the Commission's mandate impossible, and that a waiver would serve the public interest by ensuring that per-call tracking and payphone compensation can be implemented in an orderly manner.[6]

TDS Telecommunications Corporation ("TDS") has asked the Commission to give it until next July to implement a LIDB-based system for providing payphone digits. TDS's brief petition offers as its only justification for a waiver the claim that "as a consequence of the need for TDS employees to deal with several

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[5]*Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (Com. Car. Bur., Oct. 7, 1997) ("Waiver Order").

[6]USTA Petition at 5.

other pressing regulatory issues and technological problems during the past several months... TDS has only recently been able to evaluate and determine the most suitable method for its subsidiaries to use in transmitting the required digits with payphone ANI."[7]

The September 30th letter from the LEC ANI Coalition can hardly be characterized as a waiver request at all. Rather, it merely serves as an admission that on the eve of per-call compensation the largest LECs will not be delivering payphone coding digits for about 40 percent of the payphone lines connected to their networks. In an intriguing demonstration of psychic ability, the Coalition relates its understanding that the Commission will be issuing a separate order to address the tracking requirements of paragraph 64 of the Reconsideration Order. The Coalition further purports to show the Commission "what should happen" during the "interim period" before the Commission readdresses tracking issues "based on a full record, in a separate order."[8]

None of these requests meets the standards set by the Commission for granting waivers of its rules. First, all of these requests are so broad in their desired effect that they go to the

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[7]TDS Petition at 2. The TDS Petition presumes that a LIDB-based system is an acceptable way to comply with the signalling requirements of the Reconsideration Order. WorldCom does not agree that the Reconsideration Order contemplates the use of LIDB. Clearly TDS has bundled its waiver request with a request that the Commission modify the underlying rule.

[8]*Letter from Michael K. Kellogg to John B. Muleta, Acting Deputy Chief, Common Carrier Bureau, September 30, 1997.*

basis of the tracking rules and therefore should only be addressed as part of rulemaking. The temporary nature of the relief requested does not cure the problem.

If the Commission grants these waivers it will do far more than temporarily relieve a burden on the LECS - it will prejudice the rights of WorldCom, other payors and all customers of toll free and calling card services.

During the period of time when the LECs and PSPs are excused from compliance, payphone blocking from the affected phones will be impossible. More importantly, WorldCom will lose the ability to pass through in a timely manner payphone compensation expenses on up to forty per cent of all payphone traffic. WorldCom estimates its exposure will exceed $7.4 million per month. Pass through of per call compensation expenses to carrier customers will become nearly impossible in some cases.

WorldCom's billing systems will also be affected. Unless real time signalling is received, WorldCom will be unable to consistently pass through per call compensation expenses on the customer invoice which contains the associated usage charges for the call. This inconsistency will be noticed by customers who will for the first time be seeing payphone surcharges on their WorldCom invoices. Customers will blame the inconsistent treatment on WorldCom and question the integrity of our billing systems.

The existing rule, embodied by paragraph 64 of the <u>Reconsideration Order</u> which grants compensation only to properly identified phones, protects WorldCom from the very harms described above. Therefore, if the effect of a waiver is to remove the protection, the Commission will have modified the underlying rule. This the Commission cannot do.

The Commission has traditionally avoided granting waivers which would have the effect of modifying a rule or which would prejudice other parties protected by a rule. For example, in a proceeding where an applicant sought a waiver of a rule intended to prevent interference solely by attacking the basis for the rule, arguing that other frequency blocks used by competitors were subject to different requirements, the Commission properly rejected the request as one of general applicability.[9]

As the Commission stated in Riverphone, the function of a waiver is not to change the general standard, a matter for which the opportunity for general comment is a prerequisite under the Administrative Procedure Act, but to justify an ad hoc exception to that standard in a particular case.[10] Applying Riverphone to the requested payphone waivers, one can hardly describe as ad hoc an exception that will essentially allow an entire industry to evade the intended effect of an existing rule. In Riverphone, the Commission also acknowledged the dangers of allowing waivers to erode the Commission's rules, stating, "While waivers are a necessary safety valve for rules of general applicability and an

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[9]*In the Matter of Applications for authority to construct and operate an Automated Maritime Telecommunications System using the Group C channels by Riverphone, Inc. T/A Maritel*, 3 FCC Rcd. 4690, 1988 WL 489387 (1988).

[10]*Id.*

agency need give meaningful consideration to waiver requests, it also must not eviscerate a rule by waiver."[11]

The Commission today continues to caution that even waivers found to be in the public interest should not be so broad as to eviscerate the rule.[12] These waiver requests would have exactly that prohibited effect.

IV. THE WAIVER REQUESTS AND THE TEMPORARY WAIVER DO NOT SATISFY PROCEDURAL REQUIREMENTS IMPOSED BY THE COURTS

The FCC is required to evaluate waiver requests using a policy which permits waivers only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. Although the applicants and the Bureau all parrot the general standard, neither prong has been met, either by the requests or the sua sponte waiver granted by the Bureau.

According to the October 7 Order, the special circumstances which justify the waiver consist of one fact - transmission of payphone-specific coding digits is not yet ready for implementation for certain phones.[13] This explanation falls far short of what the Commission is required to do to sustain a waiver request. Mere conclusory statements are not sufficient to satisfy the WAIT Radio[14] standard which governs waiver requests.[15]

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[11] *Id.*

[12] *E.g., In the matter of Southwestern Bell Telephone Company,* CC Docket No. 97-158, 1997 WL 392246 (1997)

[13] *October 7 Waiver Order* at 4.

[14] *WAIT Radio v. FCC,* 418 F.2d 1153 (D.C. Cir. 1969).

The waiver requests and the temporary waiver also fail the public interest test espoused by the Bureau. Grant of these waivers will serve only the private pecuniary interests of the LECs and PSPs. Indeed, the LECs which have failed to comply with the general rule will be the largest recipients of payphone compensation. What the requests and the temporary waiver ignore is the public's interest in being billed properly for compensable calls and having the tools necessary to block unwanted calls from payphones. The waivers must be denied because they would reflect an outrageous, unpredictable and unworkable policy.[16]

In conclusion, the waivers cannot be granted because they are in reality attacks on the underlying rule and they fail to meet the public interest requirements which the Commission is required to consider in evaluating any waiver request. As discussed above, grant of the requested waivers would do far more than merely excuse the LECs from their failure to provide proper payphone coding digits. Permitting the LECs to delay implementation, even on a temporary basis, would prejudice all facilities-based carriers required to track compensable calls.

There is only one way to avoid this outrageous effect. If the Commission extends the period for compliance with the signalling requirement, it must also excuse carriers from paying compensation on calls from payphones which do not have the proper

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[15]*See Northwest Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1167 (D.C. Cir. 1990).

[16]*Id.*

signalling in place. This balancing of interests would protect the carrier payors and would give the LEC PSPs financial incentives to complete their obligations. Independent PSPs affected by LEC delays could look to the LECs for damages they may have incurred.

If the Commission does not vacate the temporary waivers improperly granted by the Bureau, then the Commission must make clear that payors have no obligation to compensate payphone owners whose phones are subject to the waiver.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 30th day of October, 1997, sent a copy of the foregoing "Comments of WorldCom, Inc." by hand delivery to the following:

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